

REMARKS/ARGUMENTS

Initially, Applicant would like to express appreciation to the Examiner for the detailed Official Action provided.

Upon entry of the above amendments claim, 1 will have been amended, and claims 1-5 are currently pending. Applicant respectfully requests reconsideration of the outstanding rejection, and allowance of all the claims pending in the present application.

In the Official Action, the Examiner rejected claims 1-5 under 35 U.S.C. § 102(e) as being unpatentable over SCHARF (U.S. Patent No. 6,682,563).

Although Applicant does not necessarily agree with the Examiner's rejection of the claims on these grounds, Applicant nevertheless has amended independent claim 1 solely to more clearly obviate the above-noted grounds of rejection in order to expedite prosecution of the present application. In this regard, Applicant notes that SCHARF fails to teach or suggest the combination of elements as recited in amended claim 1. In particular, claim 1, as amended, sets forth a rhombic vertebra body plate including, inter alia, a plurality of screw insertion holes provided on at least one of the first and second diagonal lines of the main body portion, wherein the plurality of screw insertion holes includes all insertion holes provided on the main body, and wherein the plurality of screw insertion holes have substantially the same shape and size.

Applicant submits that SCHARF, alone or in any proper combination, lacks any disclosure of at least the above-noted combination of elements.

The Examiner cites to SCHARF, FIGS. 3 and 5, as purportedly teaching a rhombic plate. In this regard, the Examiner takes the position that at least one hole is

provided on the first diagonal or second diagonal lines (see Page 2, Para. 10 of the Official Action). However, SCHARF discloses the apertures (31 and 32), provided on the main body (which the Examiner has characterized as elements 20 and 30), having a substantially different shape and size, i.e., SCHARF discloses both circular screw-receiving apertures (31) and slotted screw-receiving apertures (32). Thus, SCHARF does not disclose the claimed plurality of screw insertion holes provided on at least one of the first and second diagonal lines of the main body portion, wherein the plurality of screw insertion holes includes all insertion holes provided on the main body, and wherein the plurality of screw insertion holes have substantially the same shape and size.

Applicant further notes that the slotted screw-holes and the circular screw-holes appear to be essential features of SCHARF. In this regard, SCHARF discloses providing the slotted screw-apertures, of greater length than the diameter of the circular-screw apertures, in order to receive larger bone screws (Col. 5, lines 20-25). Further, Applicant notes that each independent claim (i.e., claims 1, 4 and 20) of the SCHARF patent recites both “a slotted screw-receiving aperture” and “a circular screw-receiving aperture”. Therefore, there would be no motivation to change the shape and size of the insertion apertures disclosed in SCHARF.

As pointed out in the previous Response of April 25, 2006 (all arguments of which are expressly incorporated herein, as well as those of Applicants’ other previous responses), at least one advantage of the above-noted features of the present disclosure is that a machining process is made easier by providing the main body with insertion holes of the same shape and size, rather than machining insertion holes

having a different shape and size. Further, in regards to the Examiner's assertion that Applicant fails to address in the specification the importance of screw holes having a similar hole shape, Applicants submit that in the non-limiting embodiments of Figures 1-5B (which are also part of the Specification) the main body is shown having insertion holes of substantially the same shape and size. Further, as evident from Figure 3 of SCHARF, the formation of screw holes 31 and 32 would require different machining operations.

A further aspect of a non-limiting embodiment of the present disclosure, as recited in new dependent claim 5, sets forth a vertebra body plate including, inter alia, the main body portion being formed having a curved shape corresponding to a peripheral surface of a vertebra body.

Applicant submits that that SCHARF, alone or in any proper combination, lacks any disclosure of the aforementioned features.

The Examiner cites to Figure 5 of SCHARF as purportedly disclosing a plate that is capable of corresponding to the surface of a vertebra (see page 6, reference numeral 12, of the Official Action). However, claim 5 of the present invention recites that the main body portion is formed having a curved shape. In this regard, the Examiner has not indicated in the Official Action where or how SCHARF discloses a main body portion having a curved shape corresponding to a peripheral surface of the vertebra body. In fact, in Col. 5, lines 8 and 9, SCHARF states that "[t]he fixation plate members 30 are preferably generally planar and are relatively thin in the anterior posterior direction". Thus, SCHARF does not disclose the main body portion being formed having a curved shape corresponding to a peripheral surface of a vertebra body.

Further, to the extent that the Examiner is attempting to assert that the curved shape of the main body is inherent in the disclosure of SCHARF, the Examiner is reminded that "[t]o establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

Absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since the applied reference fails to disclose each and every element recited in independent claim 1, as well as claims 2-5 dependent therefrom, these claims are not anticipated thereby. Further, all pending dependent claims recite additional features that further define the present invention over the prior art. Accordingly, the Examiner is respectfully requested to withdraw the rejection under 35 U.S.C. § 102 and allow all pending claims in the present application.

In view of the arguments herein, Applicant submits that independent claim 1 is in condition for allowance. With regard to dependent claims 2-5, Applicant asserts that they are allowable on their own merit, as well as at least because they depend from independent claim 1, which Applicant has shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY

Applicant submits that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicant has argued the allowability of the claims and pointed out deficiencies of the applied reference. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

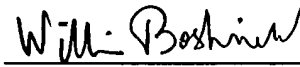
Applicant notes that this amendment is being made to advance prosecution of the application to allowance, and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

P24195.A09

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

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